Access to national courts – Denmark

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Present law:

General observations: Access to court in Denmark is generally limited by three conditions: (1) the plaintiff must have what is named: "legal interest" in the claims; (2) the claims must be judiciable; (3) the plaintiff must meet the requirement of courts for "party-ability" as a legal person (identifiable, economic liable - exclude some green group). Mainly its the first condition which is disputed in environmental cases - but in the last years, the second condition has been used as a defence by the public authorities - but often without success

1. **Access for victims of traditional damage**: Citizens suffering personal injury to health or property from pollution are accepted as having standing. If the claim reflect damage to real property - the burden of proof is related to the merits - and does not effect *locus standi*. During the last five years the Supreme Court has even recognized compensation to neighbours for establishing high tension cables - although the Supreme Court admit that it was uncertain wether the exposure from the high tension cause damage to health. In stead the compensation was reasoned by the reduction of private property caused by the public debate on the possible damage from this cables.

2. **Access regarding damage or impairment of the environment**: If polluting activities effect the private property or the health of the plaintiff, standing is accepted as a private nuisance case. It has been disputed whether citizens have access to nuisance claims, when the polluting activity is permitted by public authority. However, this limitation has been rejected in several court cases. The public authorization does not automatically preclude private nuisance - but it might effect the acceptable level of nuisance.

3. **Enforcing public environmental law**: Citizens do in general not have access to enforce the public administrative environmental law (permissions, conditions, procedural requirements). The right of citizens to act in private nuisance-cases - is not on behalf of the public or the environment - but reflects only traditional damage concept. There are two exceptions from this general rule:

   (a) Under the Fishing Act, the Anglers Association can take action for damages if streams or lake are polluted because of violation of the environmental legislation. This exception has been used in several cases.
   (b) Regarding physical planing, courts have generally accepted that effected

citizens could not only challenge, if procedural rule have been followed.
EC-law: Based on the juris prudence under the second exception, Danish courts have recognized citizens as well as green organization having standing regarding claims on concrete breech of the EIA-directive - and lately also, even the habitatdirective in a case regarding reintroduction of the beaver.

4. **Standing for environmental organizations:** Regarding environmental organization, the question of access to court, must be divided into two categories under Danish Law: (a) access to challenge normative decisions of public authorities (permits, conditions for permits) - and (b) access to enforce the norm.

(a) *Normative decision* on how much pollution is accepted, which precautionary measures are required in permits and consents are mainly subject to administrative appeal, and the access to such administrative appeals do mainly also include green organization (the access was expanded because of the Danish ratification of the Aarhus Convention). If the green organization use this access to administrative appeal, the green organization will also have access to challenge the decision of the administrative appeal body. - But if, this right to administrative appeal is not used, its doubtful to what extend, the green organization has standing.

(5+6) (b) *Enforcement* of the public environmental law is in Denmark in the hand of the local authorities and the police. With the above mentioned exception from the Fishing Act, citizens are not entitle to take action at court to enforce standards and permits in environmental law. If the local council decide not to take action - this decision cannot be challenged by citizens. Citizens can ask the ministry of interior to make sanctions against the local council - but normally it wouldn't help. First, the ministry is not obliged to act. Secondly, under Danish environmental law, its for the local councils to decide, what is a proper reaction (a request is often the only reaction) - and thirdly, the ministry can only act, if it is obvious, that the response from the local council is illegal. Thus, regarding enforcement, green organization don't have rights - but they can of course complain and hope. Although the Aarhus-Convention article 9(3) and 9(4) require access to enforcement and also adequate remedy in this respect - this is not reflected in the Danish implementation, because the ministry of Justice as well as the Environmental Protection Agency, strongly had advocated against such access.

The EC-level

10. ***Do citizens have access to court under the recent Treaty:*** Before asking for changes, one should take into account to what extend, recent juris prudence support access to courts. Regarding the national level, the ECJ-cases strongly indicate that citizens must have access to court, if their rights derived from EC-environmental are violated. Its well known, that ECJ has interpreted the right to participation in the EIA-directive as enforceable for effected citizens (*Krajiveld)* - and even for green organizations which at national level have locus standi (*WWF v. Borzen*). But in my view, the existing ECJ-jurisprudence goes further. Following the cases and the EC-environmental law, the citizens have right not to suffer health problems because of certain pollutants in air and water. If these rights are violated because binding environmental quality standards are exceeded or because of violation of binding EC-emission standards - it seems faire to conclude, that EC-law require access to court. Furthermore, to prevent uncontrolled pollution EC-law requires permits for different polluting activities (IPPC, disposal and recovery of waste, direct and indirect release of certain pollutants to surface and ground water, installations which could have significant environmental impact). Following the ruling of the European Court of Human Rights in Lopez Ostra it seems also faire to conclude that citizens effected by missing permits to some extend have standing - at least to bring public authorities to court.

11-13 ***Problems in enforcing EC-environmental law differs***:

At *national level* there are mainly two problems: (a) the knowledge of EC-environmental law is bad: - neither authorities, nor lawyers and judges are familiar with the comprehensive legislation - and its principle concepts; (b) the public authorities - and particular the ministry of environment take very strong efforts to prevent the national court from asking the ECJ on interpretation of EC-law - and generally Danish courts have been reluctant to ask ECJ. In my view - these two problems cannot be solved by legislation - its a question of tradition and time...

At the *Community level* - the problems of access for citizens to justice seems much bigger than at national level - and the ECJ-ruling in the *Greenpeace Canarian Island case* does only present the top of the icemountain. First, regarding national compliance citizen complains to the Commission are handled in diplomatic way - with no transparency. If Member State succeed in preventing a case - this is used as a legal argument in national courts. Second, regarding the Community itself, citizens do not have sufficient access to challenge the increasing numbers of administrative decisions effecting the environment.